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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

OMAR FATHI MOUSA,

Defendant and Appellant.

H025533

(Santa Clara County

Super. Ct. No. CC076985)

Appellant Omar Mousa renews his challenge to an order/condition of probation that his passport not be returned to him. This court decided exactly the same issue in appellant's prior appeal in case number H025026.

*Proceedings Below*

Appellant pleaded guilty to one count of operating as an unregistered unlawful detainer assistant (Bus. & Prof. Code, §§ 6402, 6425, and 1620) and one count of conspiring to defraud by false pretenses (Pen. Code, § 182, subd. (a)(4)).

On November 18, 2001, in accordance with a plea agreement, the court suspended imposition of sentence, granted appellant five years formal probation and ordered victim restitution. At the same time, the court ordered that appellant's passport not be returned to him.

On December 18, 2001, appellant filed a motion requesting that his passport be returned temporarily so that he could return to Jordan to visit his sick mother. The court denied the motion.<sup>1</sup> On July 31, 2002, appellant filed a second motion requesting release of his passport. On August 13, 2002, the court denied the motion without prejudice.

Appellant filed a notice of appeal on September 10, 2002.

### *The First Appeal*

On September 23, 2003, this court filed an opinion in the first appeal. We decided that although couched in terms of an attack on the trial court's denial of appellant's post conviction motion to return the passport, appellant was attacking the validity of the order made at the time of sentencing that his passport not be returned. In such a situation, we concluded that an appeal from the judgment was an adequate remedy. In essence, an appeal from the order denying a motion to return the passport, in form, was a duplicate of that which could have been filed immediately after entry of judgment.

Since entry of judgment was completed on November 28, 2001, and appellant did not file his notice of appeal until September 10, 2002, appellant's appeal was untimely.<sup>2</sup>

However, because appellant asserted that the trial court lacked jurisdiction to order that his passport not be returned to him, we found it appropriate to address the jurisdiction issue.

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<sup>1</sup> The record reveals the following notation on the December 18, 2001 minute order: "Ex Parte Application re: temporary release of Passport to deft-denied."

<sup>2</sup> Furthermore, we pointed out that as appellant pleaded guilty "[n]o appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court." (Pen. Code, § 1237.5.)

We concluded that the authority to grant, issue or verify such passports is granted exclusively to the Secretary of State. (22 U.S.C § 211a.) However, nothing in that statute vests the Secretary of State with the exclusive jurisdiction over the non-return of a passport to a defendant in connection with a judicial proceeding. For that reason, we decided that appellant's assertion that the trial court lacked jurisdiction to order that his passport not be returned to him was without merit.

After appellant filed his first appeal, he returned to the court below on December 3, 2002, and filed a third motion for an order releasing his passport. On January 7, 2003, the court below denied the motion without prejudice. Appellant filed a notice of appeal on January 17, 2003.

In this appeal appellant raises the exact same issue as in the first appeal. Again, he argues that the trial court abused its discretion by not returning his passport. Since we have addressed this issue in case number H025026, we refer appellant to the opinion in that case.

*Disposition*

The judgment is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.